

Title 2 – Tribal Government

Chapter 3 – Tribal Properties

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- 2-03.180 Severability
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Legislative History

Enacted:

Ordinance 319 Amending STC Title 2, Chapter 3 – Tribal Properties (10/9/12), BIA (11/7/12).
Ordinance 255 Amending Ordinance 217 (3/6/07), BIA (3/16/07).
Ordinance 217 Tribal Properties (2/5/04), BIA (3/1/04).

Repealed or Superseded:

Ordinance 25 Adopting Plan of Operation, Appointing Swinomish Community Center Committee, and Adopting Rules and Regulations for the Use Thereof (11/3/64).

2-03.010 Title.

This Chapter shall be referred to as the “Tribal Properties Code.”

[History] Ord. 217 (2/5/04).

2-03.020 Authority.

This Chapter is hereby enacted pursuant to Article VI, Section 1(i), (k), (l), (m), (q), and (s) of the Constitution.

[History] Ord. 217 (2/5/04).

2-03.030 Definitions.

For purposes of this Chapter:

- (A) **"Conviction,"** for purposes of this Chapter, means an adult conviction for a sex offense, or a juvenile offender, delinquency or criminal adjudication for a sex offense.
- (B) **"Encroach,"** for the purposes of this Chapter, means to intrude upon the real property of another, advancing beyond the usual or proper limits or boundary lines.
- (C) **"Enforcement Officer" or "Police Officer"** means every person authorized by the Senate to serve as a Swinomish Enforcement Officer and officers commissioned by the United States.
- (D) **"Senate"** means the Swinomish Indian Senate.
- (E) **"Sex offense,"** for the purpose of this Chapter, means any offense which would fall under the Chapter entitled “Sexual Offenses,” STC 4-03, and/or is defined as a sex offense by the laws of the jurisdiction wherein the person was convicted or received a deferred prosecution or judgment or suspended sentence.
- (F) **"Tallawhalt development"** means that portion of the land within Allotment T 1027 located in the NW ¼ NW ¼ of Section 36, Township 34 N, Range 2E, W.M. and shown in the Plat of Tallawhalt Phase I, dated 9/18/2007 (recorded under Skagit County Auditor’s File No. 200709200143 and depicted graphically on the map appended to this Title 2, Chapter 3 of the Swinomish Tribal Code), including lots,

streets, sidewalks, Native Vegetation Retention Areas and other lands that have been subdivided or that may contain some infrastructure such as a road or utilities for future use but upon which structures have not yet been lawfully constructed and occupied.

“Tribal buildings” are tribally owned structures located on tribal properties including such buildings as the Swinomish Community Center (which includes the gym, the day care center, and other facilities), the social services building, the dental clinic, the tribal administration building, the planning department offices, the fish plant, the net shed, the housing garage, the Fisheries Office building, the oil spill building, the trailer located on Moorage Way, the Web Steel Building, the open air market in LaConner, the buildings located on the ball field, the Smokehouse, the health clinic, the casino and bingo hall, the gas station, the docks and piers, the water and sewer facilities, and other public services buildings. As used in this Chapter, the term **“tribal building”** does not include tribal housing or other dwellings.

- (G) **“Tribal Court”** and **“Court”** mean the Swinomish Tribal Court.
- (H) **“Tribal Properties”** means all lands, buildings and other facilities owned by the Tribe, including lands held in trust by the United States for the Tribe. As used in this Chapter, the term **“Tribal Properties”** does not include a Swinomish Housing Authority or Tallawhalt development dwelling unit or the leasehold or parcel of land upon which such unit is located.
- (I) **“Tribe”** means the Swinomish Indian Tribal Community, a Federally recognized Indian Tribe.

[History] Ord. 319 (10/9/12); Ord. 255 (3/6/07); Ord. 217 (2/5/04).

Subchapter I – Control and Uses

2-03.040 Senate Control.

The use of tribal properties shall be under the direction and control of the Senate, which may exercise this control through appointed authorities, commissions, committees, agents, and employees.

[History] Ord. 217 (2/5/04).

2-03.050 Use and Purposes.

For the primary benefit of the Swinomish Indian Tribal Community and its members, tribal properties shall be used to provide government services, meeting places, health facilities, recreational facilities and/or educational facilities. Tribal properties may also be used for civic and business purposes and the advancement of tribal culture and religion. While it is intended that tribal properties be used primarily for the benefit of the Tribe and its members,

tribal properties may also be made available to others when the use by such others will not conflict with the primary purposes to which the specific property shall be devoted.

[History] Ord. 217 (2/5/04).

2-03.060 Use Permits and Rental Fees.

Any individual or group of individuals, other than the Tribe itself, must obtain written permission or authority from the Senate or its designee to use a tribal property for any purpose other than a tribally sponsored or authorized event, activity or program. The Senate or its designee shall set rental fees, when charged, for the use of tribal properties. Such rental fees shall be paid into the Tribe's general fund.

[History] Ord. 217 (2/5/04).

Subchapter II – Civil Infractions

2-03.070 Civil Infractions.

It is a civil infraction for any person to fail to comply with the following provisions:

- (A) No smoking is allowed in tribal buildings, except the breezeway in the Smokehouse and the casino and bingo hall;
- (B) No intoxicating beverages are allowed in tribal buildings, except the gas station, the casino and bingo hall;
- (C) No controlled substances, as defined in Chapter 4-10 of this Code, are allowed on tribal property, except, as otherwise legal, in the health and dental clinics or in the lawful possession of an enforcement officer;
- (D) No drug paraphernalia, as defined in Chapter 4-11 of this Code, is allowed on tribal property, except as otherwise legal or in the lawful possession of an enforcement officer;
- (E) No guns or ammunition are allowed in tribal buildings, except in the possession of an enforcement officer;
- (F) No person under the influence of intoxicating beverages is allowed in any tribal building, except the casino and bingo hall or while in police custody;
- (G) No person under the influence of a controlled substance without a valid prescription is allowed on tribal property, except while in police custody;
- (H) No person may intentionally inflict or attempt to inflict bodily injury upon another without lawful authority on tribal property;

- (I) No person may maliciously disturb, damage, injure, or destroy any tribal property or portion thereof;
- (J) No person may use abusive language that intentionally creates a risk of assault, as defined under either STC 4-02.020 or RCW 9A.36, on tribal property;
- (K) No person may knowingly disrupt any lawful assembly or meeting of persons on tribal property without lawful authority; and
- (L) No person may intentionally obstruct vehicular or pedestrian traffic on tribal property without lawful authority.

[History] Ord. 217 (2/5/04).

2-03.075 Civil Infraction – Swinomish Community Center.

- (A) It is a civil infraction for any person
 - (1) who is registered or required to register as a sex offender under the laws of the Tribe or under a law or ordinance in another jurisdiction with similar registration requirements; or
 - (2) who has been found to have committed any sex offense by a court of competent jurisdiction; or
 - (3) who has been convicted of any sex offense by a court of competent jurisdictionto enter or be within the premises or grounds of the Swinomish Community Center.
- (B) It is an affirmative defense to a charge under Section 2-03.075(A), that
 - (1) the tribal court has entered an order under Section 2-03.075(C) allowing the offender to be in the Swinomish Community Center pursuant to Section 2-03.075(C) and its inherent powers;
 - (2) that the defendant was at the time of the infraction classified as a Level I sex offender in accordance with Swinomish law or the laws of another jurisdiction; or
 - (3) that the defendant was attending a funeral at the time of the infraction.

The defendant must prove the affirmative defense by a preponderance of the evidence.

- (C) The Tribal Court, upon petition from an individual subject to the restrictions set forth in Section 2-03.075(A), may waive temporarily the applicability of Section 2-03.075(A) and may impose any alternative conditions deemed appropriate pursuant to the court's inherent powers.

[History] Ord. 255 (3/6/07).

2-03.076 Civil Infraction – Encroachment on Tribal Property in Talawhalt Development.

It is a civil infraction for any person to leave or store personal property on, or allow personal property to remain or encroach on, Tribal properties within the Talawhalt development without the express written permission of the Tribe.

[History] Ord. 319 (10/9/12).

2-03.080 Officers to Enforce.

All enforcement officers commissioned by the Tribe shall have the authority to enforce Section 2-03.070, 2-03.075 and 2-03.076. Any enforcement officer shall, upon request, produce evidence of his or her commission.

[History] Ord. 319 (10/9/12); Ord. 217 (2/5/04).

2-03.090 Notice of Infraction – Issuance by Enforcement Officer.

- (A) An enforcement officer has the authority to issue a notice of civil infraction under this Chapter:

- (1) When it occurs in the enforcement officer's presence; or
- (2) When an enforcement officer has reasonable cause to believe a civil infraction has been committed.

- (B) The officer shall give the notice of infraction to the offending individual and;

- (1) for violations of 2-03.070 or 2-03.075 shall remove the individual from the Tribal property or
- (2) for violations of 2-03.076 shall direct the offending individual to move the personal property to a lawful location.

[History] Ord. 319 (10/9/12); Ord. 217 (2/5/04).

2-03.100 Notice of Infraction – Issuance by the Court.

The Tribal Court may issue a notice of civil infraction when it receives a written statement of an enforcement officer that there is reasonable cause to believe that an infraction has been committed.

[History] Ord. 217 (2/5/04).

2-03.110 Notice of Infraction – Deadline for Response.

A person who receives a notice of infraction must respond to the notice within fifteen (15) days of the date the notice was issued pursuant to Section 2-03.090 or, if the notice was issued by mail pursuant to Section 2-03.100, within eighteen (18) days of the date the notice was mailed.

[History] Ord. 217 (2/5/04).

2-03.120 Notice of Infraction – Three Options for Response.

A person shall respond to a notice of civil infraction in any one of the following ways:

- (A) Pay the fine to the Tribal Court on or before the response deadline stated in Section 2-03.110. The Court shall then enter a judgment that the person committed the civil infraction.
- (B) Request a hearing to explain the circumstances without contesting that he or she committed the infraction, surrounding the occurrence of the infraction or in cases involving a violation of 2-03.076 to provide mitigating evidence that the personal property has been removed from the Tribal property, which might arguably lessen the amount of the fine.
- (C) Request a hearing to contest whether the infraction occurred.

[History] Ord. 217 (2/5/04).

2-03.130 Notice of Infraction – Failure to Respond.

If a person fails to respond as required in Sections 2-03.110, or fails to appear at a hearing scheduled pursuant to this Chapter, the Tribal Court shall enter an order finding that the person committed the infraction and shall assess the appropriate fine and applicable court costs.

[History] Ord. 217 (2/5/04).

2-03.140 Fines, Prohibition of Access and Remedial Orders.

- (A) An infraction committed under Sections 2-03.070, 2-03.075 of this Chapter shall be punishable by the following civil penalties:

- (1) **First Violation.**
 - (a) **Fine.** The fine for a first infraction shall be fifty dollars (\$50.00).
 - (2) **Second Violation.**
 - (a) **Fine.** The fine for a second infraction shall be one hundred dollars (\$100.00), plus court costs if deemed appropriate by the Court; and
 - (b) **Prohibition of Access.** The Court may, at its own discretion, prohibit the individual from entering all or specific Tribal properties for up to one (1) year.
 - (3) **Third and Subsequent Violation.**
 - (a) **Fine.** The fine for third and subsequent violations shall be one hundred fifty dollars (\$150.00), plus court costs if deemed appropriate by the Court. The Court may, in addition, impose sanctions for violation of any order entered pursuant to Section 2-03.140(A)(2)(b); and (b) **Prohibition of Access.** The Court may, at its own discretion, prohibit the individual from entering all or specific Tribal properties for up to five (5) years.
- (B) An infraction committed under Section 2-03.076 of this Chapter shall be punishable by the following civil penalties:
- (1) **First Violation.**
 - (a) **Fine.** The fine for a first infraction under Section 2-03.0755 shall be one hundred dollars (\$100.00); and
 - (b) The Court may, at its own discretion, direct the offending party to remove their personal property to a lawful location.
 - (2) **Second Violation.**
 - (a) **Fine.** The fine for a second infraction shall be two hundred dollars (\$200.00), plus court costs if deemed appropriate by the Court. The Court may, in addition, impose sanctions for violation of any order entered pursuant to Section 2-03.140(B)(1)(b); and
 - (b) The Court shall direct the offending party to remove their personal property to a lawful location within a specified period of time.

(3) **Third and Subsequent Violation.**

- (a) **Fine.** The fine for third and subsequent violations shall be four hundred dollars (\$400.00), plus court costs if deemed appropriate by the Court. The Court may, in addition, impose sanctions for violation of an order entered pursuant to Section 2-03.140(B)(1)(b) or (B)(2)(b).

[History] Ord. 319 (10/9/12); Ord. 217 (2/5/04).

Subchapter III – Smokehouse

2-03.150 Smokehouse.

The Swinomish Smokehouse is a tribal property held for the benefit of those tribal members who adhere to the Smokehouse religion. General admittance into the Smokehouse is reserved to those tribal members who adhere to the Smokehouse religion. The Senate delegates the authority to the Smokehouse Organization or Smokehouse Committee, within their discretion, to authorize or invite other individuals to be present in the Smokehouse and the Smokehouse Committee may delegate this authority to individuals who adhere to the Smokehouse religion during family sponsored events. The Smokehouse Organization or Smokehouse Committee, or other individual authorized by the Smokehouse religion, may remove any individual who violates Smokehouse traditions or etiquette (*e.g.*, a person may be removed for use of a camera or recording device during a Smokehouse event).

[History] Ord. 217 (2/5/04).

2-03.160 Enforcement.

All enforcement officers commissioned by the Tribe shall have the authority to remove an individual from the Smokehouse for any reason upon the request of a member of the Smokehouse Committee or its designee.

[History] Ord. 217 (2/5/04).

Subchapter IV – Repealer, Severability and Effective Date

2-03.170 Repealer.

[Reserved]

[History] Ord. 217 (2/5/04).

2-03.180 Severability.

If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Title, or the application of the provision to other persons or circumstances remains in effect.

[History] Ord. 217 (2/5/04).

2-03.190 Effective Date.

This Chapter shall be effective upon approval by the Secretary of the Interior or the Secretary's designee.

[History] Ord. 217 (2/5/04).

